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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.167 OF 1998
(ARISING OUT OF REFERENCE MADE BY LOWER COURT)

The Joint Civil Judge,
Junior Division, Kalyan and
two others — Applicants

versus

Keshav Purshottam Virkar — Respondent/ Contemnor

Shri Joaquim Reis, Amicus Curiae for applicants.
Shri A.R.Patil, AGP for the State Government.

CORAM : A.S.OKA, J.

DATE : 05th April 2007

PC :

1. A reference was made by the learned Joint Civil Judge, Junior Division, Kalyan to this Court for the purpose of bringing to the notice of this Court the alleged contempt committed by the respondent. It will be necessary to briefly refer to the facts of the case. The order of reference has been passed by the learned Trial Judge while dealing with an application for revocation of Succession Certificate granted in favour of the Contemnor.

2. One Chandra Purushottam Virkar @ Shobhanabai Jagannath Bharvirkar died on 18th May 1985 at Mumbai. The contemnor is her real brother. It appears that the deceased Shobhanabai executed a Will on 11th May 1985 by which she bequeathed her entire property in favour of Shri Ashok Ramchandra Joshi and Shri Narsinha Dattatraya Mule. They applied to this Court on the basis of which a Probate was granted in their favour. Notice of the application for probate was published in a news paper. The contemnor raised an objection in writing to the grant of probate. Therefore, the proceedings for probate were converted into a suit. The contemnor, however, filed a purshis on 12th February 1993 withdrawing all the objections raised by him. Thereafter, this Court granted Probate by order dated 7th April 1993.

3. It appears that there were certain deposits of deceased Shobhanabai in CKP Co-operative Bank Limited, Dadar. The contemnor applied for grant of succession certificate in respect of the said deposits in the Court of Civil Judge, Junior Division, Kalyan. Public notice with citation was issued. The legatees were not aware of the

said proceedings and therefore, the succession certificate was issued in favour of the contemnor. The succession certificate was relating to the deposits in the bank as well as a bank locker. On the basis of the probate granted, the legatees attended the bank to withdraw the amounts when they learnt about the succession certificate granted in favour of the contemnor. That is why they applied for revocation of the succession certificate. On the basis of the aforesaid conduct of the contemnor, a reference was made to this Court. On 6th February 2001 this Court issued Rule in presence of the contemnor.

4. Initially the the said Shri Ashok Joshi and Shri Jarsinha Mule appeared through their advocate for assisting this Court. As this Court found that none was appearing for the legatees under the will who had applied for revocation of the succession certificate, this Court requested learned counsel Shri Joaquim Reis to act as an Amicus Curiae. With his assistance I have gone through the entire record. When the petition was heard on the last day, the contemnor’s daughter was present and she stated that the contemnor has been hospitalised and was unable to attend this

Court. In fact, an affidavit has been filed by the contemnor's daughter Manisha Pradip Waswani on 11th October 2006 setting out the health condition of the contemnor. There is a separate affidavit filed on the very day by the daughter of the contemnor in her capacity as a Constituted Attorney of the contemnor in which an apology has been tendered.

5. It appears from the record that the contemnor has brought back a total amount of Rs.1.04 lakh (Rs.One lakh four thousand only) which he had withdrawn on the basis of the succession certificate obtained by him. There is a statement in the affidavit of the daughter of the contemnor that another sum of Rs.50,000/- has been deposited by the contemnor though he was unable to trace out the receipt. Apart from the said affidavits, there is a reply dated 3rd October 2006 in writing in Marathi language filed by the contemnor. In the said reply there are some allegations made by the contemnor against the legatees under the will. He has stated that he had deposited the Gold weighing about 22 Tolas with his sister which she had agreed to return. He has stated that the will was executed in suspicious circumstances and it appears to have

been executed four to five days prior to her death. He has stated that as the legatees under the will had promised him to pay the market value of his gold lying with the deceased, on accepting first instalment of Rs.25,000/-, he filed a pursis in the probate proceedings recording his no objection. He has stated that he had withdrawn a cash of Rs.50,000/- which was lying in the locker of the deceased. He has stated that he was an employee of National Machinery Limited which was closed down. He has stated that he has brought back a sum of Rs.1.04 lakh.

6. Shri Reis brought to my notice that in the present contempt petition due to various reasons the contemnor has already undergone detention from time to time for a total period of about fourteen days. Shri Reis stated that the grandson of the contemnor who is present in the Court has stated that as of today the health condition of the contemnor is very critical. The fact that the contemnor has undergone detention of fourteen days and he has brought back a substantial amount, are the factors which need consideration as of today. Considering these aspects, now it is not necessary to take any further action against the contemnor as he has

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tendered an unconditional apology through his constituted attorney. The apology deserves to be accepted.

7. No further action is called for against the contemnor. Notice issued to him is discharged. Hence, the contempt petition is disposed of. It will be open for the persons holding the probate to withdraw the amounts deposited by the contemnor in the Civil Court, at Kalyan. The persons holding the probate will be permitted to withdraw the amounts on production of a certified copy of the probate.

(A.S.OKA, J.)